

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re: DEX MEDIA, INC.

Debtor.

YELLOW PAGES PHOTOS, INC.,

Appellant,

v.

DEX MEDIA, INC.,

Appellee.

C. A. No. 17-96-GMS
Bankruptcy Case No. 16-11200 (KG)
BAP No. 17-4
ADV No. 16-510-26

RECOMMENDATION

At Wilmington this **22nd** day of **February, 2017**.

WHEREAS, pursuant to paragraph 2(a) of the Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District dated September 11, 2012, the court conducted an initial review, which included information from counsel, to determine the appropriateness of mediation in this matter;

WHEREAS, as a result of the above screening process, the issues involved in this case are not amenable to mediation and mediation at this stage would not be a productive exercise, a worthwhile use of judicial resources nor warrant the expense of the process. Neither party is interested in mediation at this time.

This appeal arises from dismissal by the Bankruptcy Court of Yellow Pages Photos, Inc.'s (YPPI) counterclaim against Dex Media, Inc. in an adversary proceeding. On January 19, 2017, the Bankruptcy Court granted Dex Media's motion for judgment

on the pleadings and found YPPI's claims were barred by *res judicata*, judicial estoppel and collateral estoppel. Pending in the Bankruptcy Court is Dex Media's request that the Bankruptcy Court enter a final judgment that formally disallows YPPI's claims against it and provide the declaratory relief Dex Media claims it is entitled to as a result of the Bankruptcy Court's ruling. YPPI opposes this request and intends to file an objection by February 28, 2017 in the Bankruptcy Court. Accordingly, should the Bankruptcy Court enter judgment as requested by Dex Media, the parties advised that this judgment would be appealed by YPPI and likely consolidated with the pending appellate proceedings.

YPPI argues that Dex Media is seeking a stay of this present appeal, pending resolution of Dex Media's post-order request to the Bankruptcy Court for an additional order. YPPI proposes the following briefing schedule:

YPPI's opening brief	April 7, 2017
Dex Media's answering brief	May 8, 2017
YPPI's reply brief	May 26, 2017

Dex Media denies it is seeking a stay of this appeal, but argues to avoid duplication of efforts, that the parties should wait until after the Bankruptcy Court rules on the pending request for entry of judgment before submitting a joint briefing schedule for this appeal.

THEREFORE, IT IS RECOMMENDED that, pursuant to paragraph 2(a) Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court for this District and 28 U.S.C. § 636(b), this matter be withdrawn from the mandatory referral for mediation. The parties are advised of their right to file objections to this

Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), FED. R. CIV. P. 72(a) and D.
DEL. LR 72.1.

Local counsel are obligated to inform out-of-state counsel of this Order.

/s/ Mary Pat Thyng
Chief U.S. Magistrate Judge